

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF INTEGRATED RESOURCE)
PLANNING FOR THE PROVISION OF)
STANDARD OFFER SUPPLY SERVICE BY)
DELMARVA POWER & LIGHT COMPANY UNDER)
26 DEL. C. § 1007(c) & (d): REVIEW) PSC DOCKET NO. 06-241
AND APPROVAL OF THE REQUEST FOR)
PROPOSALS FOR THE CONSTRUCTION OF)
NEW GENERATION RESOURCES UNDER 26)
DEL. C. § 1007(d))
(OPENED JULY 25, 2006)

Reply of Jeremy Firestone on 2nd Staff Confidentiality Memorandum

Summary:

Given the two DE AG Opinions and Hecht, the bidders should be required to disclose all information related to price (although not profit) and price stability. It also should go without saying that air and other environmental emission and discharge estimates and the potential to control such discharges and emissions (e.g., carbon capture and sequestration potential) as well as capacity factors should be released to public view.

1. On January 29, I filed a Motion to Commence Proceedings to Determine Validity of Assertions of Confidentiality.
2. A Staff memorandum dated January 30th to interested parties set forth a proposed schedule to resolve the claims of confidentiality. The memorandum stated that such claims would be further considered by the Commission on February 27.
3. A hearing was held on the motion on February 6, 2007. Statements were made or written into the record by the State Treasurer and Senator Bunting supporting more disclosure rather than less.
4. While the Motion was denied without prejudice, I essentially received the relief requested.
5. On February 16, 2007, each of the bidders submitted re-redacted bids. Bluewater made a good faith effort to comply with the requirements; Conectiv, while not fully in compliance (e.g., it did not specify a time frame), made an effort to comply as well.
6. In contrast, one could only conclude that NRG did not take the Commission seriously: It heralded the length of its proposal, as if length were a reflection of the quality of its proposal rather than of the fact that the method of generation that it has

- proposed, coal gasification, has the shortest track record of commercial deployment of the three proposed methods and that its hoped for sequestration carries the most uncertainty. NRG substituted legal argument (primarily in the form of legal conclusions) for an item-by-item explanation of and justification for its redactions because it believes the process the Commission established to be “impractical and inefficient.”
7. Subsequently, NRG tried a third time to get it right—unfortunately it failed once again providing overly broad justification for its redactions.
 8. At the February 27, 2007 Hearing, given the impending Public Meetings the Commission agreed that NRG could submit a modified Form H that provided ranges of emissions while the Commission staff undertook a “granular” review of NRG and the other bidders claims for confidentiality.
 9. Despite the understanding that its assertions of confidentiality remained woefully overbroad and inadequate, NRG failed to shed any further light on the nature of what it had redacted or the reasons for its redactions. NRG’s actions leave the public no closer to understanding the general subject matter of much of what it as redacted, and why and for how long it will maintain the redactions, than we were when this process began.
 10. On 13 March 2007, James McC. Geddes and Janis Dillard issued a memorandum on the granular review. That memorandum and the decisions embodied therein are satisfactory in some respects, but unsatisfactory in others.
 11. While the memorandum recommends that NRG be required to un-redact the real Form H, it fails to require NRG to disclose emissions and other environmental data included in NRG Vol. 1. This information is described by Mr. Geddes and Ms. Dillard as “environmental impacts and benefits” information and is found on pp. 64-67, 73-75, 77-80, 82, and 86 of NRG Vol. 1 and includes numerous tables detailing air emissions among other parameters.
 12. The memorandum also fails to require most of the redacted material on carbon capture and sequestration. For example, it supports the redactions found on pages 99-100, 103-119, 123, and 125-27 of Vol. 1. and Appendix 4 to Vol 1, and even information in the list of Tables. Without that geological and technical data, members of the public like myself cannot analyze the feasibility and probability that NRG will in fact capture and sequester some carbon dioxide, and if so, the likely percent. Thus, we are unable to make an informed judgment about the extent of greenhouse gas emissions associated with its proposal.
 13. The information on the efficacy of carbon capture and sequestration is also relevant to the issue of the emissions of criteria pollutants per MWh of delivered power since it would take substantial power—that is, additional burning of coal, should NRG attempt to capture and sequester carbon dioxide.

14. The memorandum also recommends that price data not be disclosed relying on three cases that are not on point (a) 1974 federal district court case that concerned audits, financial statements, and other financial information; (b) a 1983 Delaware case that concerned private parties where the one individual defendant, who used to work for the corporate plaintiff but who was now employed by the corporate defendant, was alleged to be disclosing trade secrets of the plaintiff to his new employer; and (c) and 1988 Delaware case, again amongst private parties where individuals had moved their employment from the corporate plaintiff to the corporate defendant, only this time concerning overly broad discovery requests of the plaintiff.
15. While mentioning a 1977 Attorney General Opinion, the memorandum fails to discuss the implications of its discussion of the disclosure of bid information. In DE AG Op. 77-037 (2000) (appended as Exhibit C to Bluewater filing), the Attorney General concluded that bid price was not subject to a claim that it is exempt from disclosure as “commercial or financial” information. “This would not include matters of substance relating to the product or service bid on, such as the quoted price....”
16. The memorandum also does not discuss DE AG Op. 00-1B15 (2000) (appended to NRG’s letter in opposition to Firestone “Response to Request for Access to Confidential Information and Motion for Entry of a Protective Order”), *citing with approval* Hecht v. Agency for International Development, C.A. No. 95-263-SLR (D. Del. Dec. 8, 1996) for the proposition that while profit multipliers were exempt from disclosure, “unit prices charged to the government were not exempt from disclosure”.
17. The memorandum also arguably suggests that interested persons such as myself should not be heard on March 20, 2007. To the extent that is the case, I would suggest that it would improper and ironic for the Commission to deny the original person who moved for disclose of these documents the opportunity to be heard, particularly as we sit today in the after-glow of Sunshine week.
18. Given that the public comment period on the staff’s evaluation of the bids will soon end, the actions of the bidders and the Commission staff is highly prejudicial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeremy Firestone". The signature is fluid and cursive, with the first name "Jeremy" and last name "Firestone" clearly distinguishable.

Jeremy Firestone
16 March 2007